

views were rooted in tolerance: “You’ve got to know how to handle it,” he would counsel. “Take it to the Lord with a prayer.”<sup>49</sup>

Viola Desmond was considerably less willing to let temporal matters lie, as the interview she gave to the Halifax *Chronicle* shortly afterward indicates:

I can’t understand why such measures should have been taken. I have travelled a great deal throughout Canada and parts of the United States and nothing like this ever happened to me before. I was born in Halifax and have lived here most of my life and I’ve found relations between negroes and whites very pleasant. I didn’t realize a thing like this could happen in Nova Scotia—or in any other part of Canada.<sup>50</sup>

The shock that underlies this statement clearly communicates the magnitude of the insult that Viola Desmond experienced in the Roseland arrest. She must have been no stranger to racial segregation. She had taught in segregated schools, been denied occupational training on the basis of race, and was keenly aware of segregated facilities in her own business. Segregated seating in a Nova Scotian theatre must have seemed the last straw. And how substantially worse were the actions of the theatre manager and various officials of the state, who responded to her measured resistance to racial segregation with armed force and criminal prosecution. To see the forces of law so unanimously and spontaneously arrayed against her quiet protest must have struck Viola Desmond as unspeakably outrageous. Couching her complaint in the most careful of terms, with polite reference to the “very pleasant” relations which normally ensued between the races, she challenged Canadians to respond to this unconscionable treatment, to side with her against the legal authorities who had promoted her conviction.

A considerable portion of the Black community in Halifax seems to have shared Viola Desmond’s anger and concern over the incident. The Reverend William Pearly Oliver was one of the first to take up the case. Born in 1912 and raised in a predominantly white community in Wolfville, Nova Scotia, the Reverend Oliver had graduated from Acadia University with a B.A. in 1934, and a Master of Divinity in 1936. For the past decade he had been serving as the minister to an almost exclusively Black congregation at Cornwallis Street Baptist Church, to which Viola and Jack Desmond belonged. An influential member of the African United Baptist Association of Nova Scotia, the Rev. Oliver had achieved public acclaim as the only Black chaplain in the Canadian army during World

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49. See Jack Desmond’s comments in McCluskey, *supra* note 41; Pachai, *supra* note 32 at 154.

50. “Negress Alleges”, *supra* note 3.

War II. A confirmed proponent of racial equality in education and employment, William Oliver was no stranger to humiliating practices of racial segregation himself. He had been refused service in restaurants, barred from social activities organized by whites, and challenged when he attempted to participate in white athletic events. William Oliver was on record as committed to opposing racial segregation in hotels, restaurants and other public facilities, insisting that businesses should “cater to the public on the basis of individual behavior, regardless of race.” The Rev. Oliver and his twenty-nine year old wife, Pearleen Oliver, met with Viola Desmond that weekend.<sup>51</sup>

Pearleen Oliver would take a particularly active role in support of Viola Desmond. One of the most prominent Black women in Nova Scotia, Pearleen Oliver had been born into a family of ten children in Cook’s Cove, Guysborough County in 1917. She had “put herself through high school by doing housework”, and married the young Oliver right after graduation. In 1944, she had spearheaded a campaign of the Halifax Coloured Citizens Improvement League to force the Department of Education to remove racially objectionable material from its public school texts. The insulting depiction of “Black Sambo” in the Grade Eleven text should be superseded by the “authentic history of the colored people and stories of . . . their contribution to Canadian culture”, she insisted.<sup>52</sup> The leader of the Ladies Auxiliary of the African United Baptist Association, who campaigned extensively to eliminate racial barriers from the nursing profession, Pearleen Oliver took matters affecting Black women extremely seriously.<sup>53</sup> When the shaken and tearful

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51. For biographical details on Reverend W.P. Oliver (who would later become the Chair of the Black United Front), see C. Thomson, *Born with a Call: A Biography of Dr. William Pearly Oliver, C.M.* (Cherrybrook, Nova Scotia: Black Cultural Centre, 1986); “Halifax Cleric Elected” *The [Halifax] Chronicle-Herald* (3 September 1960) 13; Clarke, *Fire on the Water* vol. 1 (Lawrencetown, Nova Scotia: Pottersfield Press, 1991) 171; Marjorie Major “The Negroes in Nova Scotia” P.A.N.S. Mgl, vol. 1767, # 42K; Oliver, *supra* note 23; W.P. Oliver “Urban and Rural Life Committee of The African United Baptist Association of Nova Scotia” P.A.N.S. Mgl, vol. 1767, # 42L; Winks, *supra* note 5 at 350–52; R.W. Winks, “Negroes in the Maritimes: An Introductory Survey” (1969) 48:4 *Dalhousie Review* 453 at 469; N. Lubka, “Ferment in Nova Scotia” (1969) 76:2 *Queen’s Quarterly* 213.

Prior to her marriage to Jack Desmond, Viola had belonged to the racially-mixed congregation of the Trinity Anglican Church. She switched affiliations to her husband’s church upon marriage.

52. Letter of Beresford Augustus Husbands, President of the Halifax Coloured Citizens Improvement League, to Mayor of Halifax (26 January 1944). Helen Campbell Bennerman’s *Story of Little Black Sambo*, first published in 1899, became a Canadian classic, according to Robin Winks, “still selling well in its sixteenth printing in 1969.” See Winks, *supra* note 5 at 295.

53. For biographical details on Pearleen (Borden) Oliver, whose own attempts to enter the nursing profession were barred because of race, and who would give birth to five sons, see D. McCubbin, “The Women of Halifax” (June 1954) *Chatelaine* 16; Thomson, *supra* note 51;

Viola Desmond showed Pearleen Oliver the bruises she had received, the pastor's wife advised her to get immediate medical attention. The Black physician that Viola consulted on November 12th treated her for injuries to her knee and hip, and advised his patient to see a lawyer.<sup>54</sup>

The Olivers strongly supported this idea, and urged Viola Desmond to retain a lawyer to appeal the conviction. Pearleen Oliver also sought public support for Viola's case from the Nova Scotia Association for the Advancement of Colored People (NSAACP). The NSAACP, dedicated to eradicating race discrimination in housing, education and employment, had been founded in 1945. The nine Black charter members, all residents of the same Gottingen area neighbourhood as the Desmonds, were: the Reverend William P. Oliver, Pearleen Oliver, Arnold P. Smith, Richard S. Symonds, William Carter, Bernice A. Williams, Carl W. Oliver, Walter Johnson, and Ernest Grosse. Pearleen Oliver found about half of the NSAACP members supportive of Viola Desmond's court challenge, while half expressed initial reluctance. Divisions of opinion about strategies for change seem to be inherent in all social reform movements, and the NSAACP was no exception. Fears of fostering racist backlash, concerns about using the law to confront racial segregation, and questions about whether equal admission to theatres was a pressing issue seem to have motivated the more cautious.<sup>55</sup> Pearleen Oliver made a convincing case for supporting a legal claim, however, and all of the members of the NSAACP ultimately backed the case. They pledged to call public meetings about Viola Desmond's treatment and to raise funds to defray any legal costs.<sup>56</sup> As Pearleen Oliver would explain to the

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Clarke, *supra* note 51; F. Early, "Rethinking Canada: The Promise of Women's History" (1992) 21 *Resources for Feminist Research* 25. For reference to Pearleen Oliver's public speaking campaign in the 1940s to publicize cases of Black women refused admission to nursing schools, see A. Calliste, "Women of 'Exceptional Merit': Immigration of Caribbean Nurses to Canada" (1993) 6 *Canadian Journal of Women and the Law* 85 at 92. For reference to Pearleen Oliver's interest in discrimination against Black women, see Clarke, *supra* note 23 at 146, where he notes Pearleen Oliver's *One of His Heralds* (Halifax: Pearleen Oliver, n.d.) discusses the situation of Agnes Gertrude Waring (1884–1951), whose attempt to receive ordination to preach at the Second Baptist Church in New Glasgow was refused by the Maritime Baptist Convention because she was female.

54. Viola Desmond sought medical treatment from a physician from the West-Indies, who resided in the same building as her parents, and maintained an office on the corner of Gottingen and Gerrish streets. Being Black, this physician had no access to city hospitals, and had to perform all procedures in his office: Pearleen Oliver, *supra* note 26.

55. *Ibid.*

56. The mission of the NSAACP was set out in "The N.S.A.A.C.P." *The [New Glasgow] Clarion* 1:1 (December 1946) 1:

- a) To improve and further the interest of the Colored people of the Province.
- b) To provide an organization to encourage and promote a spirit of fraternity among its members.

Halifax *Chronicle*, the NSAACP intended to fight Viola Desmond's case to prevent "a spread of color-bar tactics" across the province.<sup>57</sup>

Some dissent continued to linger within the Black community. One individual wrote to *The Clarion*, a bi-weekly Black newspaper founded in New Glasgow in July 1946:<sup>58</sup>

About all we have to say about our Country is "Thank God" for it. With all its shortcomings it is still the best place on earth. I would like to start complaining about segregation in theatres and restaurants, but as I look around me and see the food stores filled to overflowing while countless millions are starving I just can't get het up over not eating in certain places. I am EATING and REGULARLY. Later on, maybe, but not now. Canada is still all right with me.<sup>59</sup>

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c) To co-operate with Governmental and private agencies for the promotion of the interest and the welfare of the Province or any community therein, wherein Colored People are resident, and particularly in reference to said Colored people.

d) To improve the educational opportunities of Colored youth and to raise the standard [of living] of the Colored people of the Province or any community therein.

Thomson, *supra* note 51 at 77 notes two predecessor organizations: the Halifax-based Colored Education Centre, founded in 1938 by F.B. Holder, a British Guiana-born Black physician, and the Halifax Colored Citizens Improvement League, founded by Beresford Augustus Husbands in 1932. For details regarding the NSAACP, see Pachai, *supra* note 32 at 241–43. See also *An Act to Incorporate The "Nova Scotia Association for the Advancement of Colored People"*, S.N.S. 1945, c. 97.

57. "Negress Alleges", *supra* note 3. This position was supported by Mrs. M.H. Spaulding, chair of the emergency committee for civil rights of the Civil Liberties League, whose views were quoted in "Ban All", *supra* note 3: "'Jim Crow practices, such as segregating Negroes or any other group in certain sections of theatres, or in keeping them out of hotels, have no place in Canada and should be forbidden by law. There is no place for second-class citizenship in this country,' said Mrs. Spaulding. She added there had been instances of the same sort of racial discrimination in other parts of Canada. The practice is that when Negroes try to buy a ticket at a theatre they are told the only seats available are in the balcony, she asserted. 'When Paul Robeson was in Toronto in 'Othello' at the Royal Alexandra he said he would not appear if there was any discrimination against colored people, and they were seated in all parts of the house.'"

58. For details on *The Clarion*, which proclaimed itself devoted to news and advocacy "in the interest of Colored Nova Scotians", see Winks, *supra* note 5 at 408–10; Pachai, *supra* note 32 at 241; C.M. Best, *That Lonesome Road* (New Glasgow, Nova Scotia: Clarion, 1977); Clarke, *supra* note 51. *The Clarion*, which ceased publication in 1956, was the second Black newspaper to be published in Nova Scotia. Wilfred A. DeCosta, Miriam A. DeCosta and C. Courtenay Ligoure published the first Black publication in Nova Scotia, *The Atlantic Advocate*, between April 1915 and 1917, from an office at 58 Gottingen Street. ["Devoted to the Interests of Colored People": The Atlantic Advocate, Nova Scotia's First Black Magazine", P.A.N.S. brochure, April 1992, copy on file with the author.] Wilfred A. DeCosta was also one of the founding trustees of the Nova Scotia Home for Colored Children; see *An Act to Incorporate The Nova Scotia Home for Colored Children*, S.N.S. 1915, c. 107.

For a listing of other Black newspapers published in Canada, see Winks, *supra* note 5 at 394–410.

59. *Clarion* 1, *supra* note 22.

The argument made here seems partially rooted in economic, or class-based concerns. The letter focuses on issues of basic sustenance, intimating indirectly that those who can afford to eat in restaurants or attend the theatre are not fully representative of the Black community. In contrast, Carrie M. Best, the forty-three year old Black editor of *The Clarion*,<sup>60</sup> believed that the question of racial segregation in public facilities was extremely important to the entire Black population. She wrote back defending those who would challenge such discrimination in no uncertain terms:

It is sometimes said that those who seek to serve are "looking for trouble." There are some who think it better to follow the line of least resistance, no matter how great the injury. Looking for trouble? How much better off the world would be if men of good will would look for trouble, find it, and while it is merely a cub, drag it out into the open, before it becomes the ferocious lion. Racial and Religious hatred is trouble of the gravest kind. It is a vicious, smouldering and insidious kind of trouble, born of fear and ignorance. It often lays dormant for years until some would be Hitler, Bilbo or Rankin emerges to fan the flame into an uncontrollable catastrophe.

It is heartening to know how many trouble shooters have come to the aid of *The Clarion* since the disgraceful Roseland incident. They are convinced, as are we, that it is infinitely wiser to look for trouble than to have trouble looking for them.<sup>61</sup>

Carrie Best would profile Viola Desmond's treatment on the front pages of *The Clarion*, denouncing it as a "disgraceful incident", and claiming that "New Glasgow stands for Jim-crowism,<sup>62</sup> at its basest, over

60. For biographical details on Dr. Carrie M. Best, born in New Glasgow in 1903, married to a Black porter for the Canadian National Railway, an editor and publisher of several Black newspapers, including the nationally circulated *The Negro Citizen* in 1949, see Best, *supra* note 58; Clarke, *supra* 51 at 171; Winks, *supra* note 5 at 405. Her son, Calbert Best, would later become national president of the Civil Service Association of Canada in Ottawa in 1960, and an Assistant Deputy Minister for Manpower and Immigration in 1970. *Ibid.* at 408.

61. Editorial, "Taking Inventory" *The [New Glasgow] Clarion* 2:4 (28 February 1947) 2.

62. The origins of the American phrase "Jim Crow" appear to go back to the 1730s, when Blacks were first derogatorily referred to as "crows." "Jim Crow" was initially used to describe some Black dances, and in 1828, Thomas D. Rice, soon to be known as "the father of American minstrelsy", popularized the term in a profoundly racist manner. A white man who performed in "Black face", Rice wrote a song titled "Jim Crow" in which he imitated and ridiculed "the erratic twitching, loose-jointed jig performed by a crippled and deformed black stableman named Jim Crow." His performance caused a theatrical sensation amongst white audiences in Louisville, inspiring far-ranging, lucrative tours throughout the United States and England, and spawning a host of Blackface imitators. (On the cultural meaning of Blackface minstrelsy, described as the "first self-consciously white entertainers", and the projection of white fears and fascination upon African-American music and dance, see D.R. Roediger, *The Wages of Whiteness* (London: Verso, 1991) at 116–19.) "Jim Crow" came to encompass a stereotypical characterization of Black males as "childlike, irresponsible, inefficient, lazy, ridiculous in speech, pleasure-seeking and happy." By 1835, "Jim Crow" and "Jim Crowism" had come to mean segregation of Blacks from whites, used in such phrases as "Jim Crow car" (1841, first

the entire globe.” She also gave prominent placement to a notice from Bernice A. Williams, NSAACP secretary, announcing a public meeting to solicit contributions for the Viola Desmond Court Fund. *The Clarion* urged everyone to attend and give donations: “The NSAACP is the Ladder to Advancement. Step on it! Join today!”<sup>63</sup>

Carrie Best was a native of New Glasgow and well acquainted with the egregious forms of white racism practised there. And she was no stranger to the heroism of Black resisters. One of her most vivid childhood memories involved a race riot which had erupted in New Glasgow at the close of the First World War. An inter-racial altercation between two youths had inspired “bands of roving white men armed with clubs” to station themselves at different intersections in the town, barring Blacks from crossing. At dusk that evening, Carrie Best’s mother was delivered home from work by the chauffeur of the family who employed her. There she found that her husband, her younger son, and Carrie had made it home safely. Missing was Carrie’s older brother, who had not yet returned home from his job at the Norfolk House hotel. Carrie described what ensued in her autobiography, *That Lonesome Road*:

In all the years she lived and until she passed away at the age of eighty-one, my mother was never known to utter an unkind, blasphemous or obscene word, nor did I ever see her get angry. This evening was no exception. She told us to get our meal, stating that she was going into town to get my brother. It was a fifteen minute walk.

At the corner of East River Road and Marsh Street the crowd was waiting and as my mother drew near they hurled insults at her and threateningly ordered her to turn back. She continued to walk toward the hotel about a block away when one of the young men recognized her and asked her where she was going. “I am going to the Norfolk House for my son,” she answered calmly. (My mother was six feet tall and as straight as a ramrod.)

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used as a nickname for a “Black only” car on the Boston Railroad), “Jim Crow law” (1890s), and “Jim Crow school (1903). C.V. Woodward *The Strange Career of Jim Crow*, 3d ed. (New York: Oxford University Press, 1974) at 7 indicates that “Jim Crow” was used as a designation for “racial ostracism that extended to churches and schools, to housing and jobs, to eating and drinking. Whether by law or by custom, that ostracism extended to virtually all forms of public transportation, to sports and recreations, to hospitals, orphanages, prisons, and asylums, and ultimately to funeral homes, morgues, and cemeteries.” See S.B. Flexner, *I Hear America Talking* (London: Van Nostrand Reinhold, 1976); *The National Cyclopedia of American Biography*, vol. 11 (New York: James T. White, 1909) at 207–08; Davis, *supra* note 26 at 51; W.T. Leonard, *Masquerade in Black* (Metuchen, New Jersey: Scarecrow Press, 1986).

63. *Clarion* 1, *supra* note 22; Editorial, “A New Year’s Message” *The [New Glasgow] Clarion* 2:1 (1 January 1947). The latter article would note that “one of New Glasgow’s leading business men” (race unspecified) had donated ten dollars to the case, leading the editor to applaud him for his “courage and generosity”. Pearleen Oliver recalls that money came in from all over the province, in amounts both large and small, with more white donors than Black: Pearleen Oliver, *supra* note 26.

The young man ordered the crowd back and my mother continued on her way to the hotel. At that time there was a livery stable at the rear entrance to the hotel and it was there my mother found my frightened brother and brought him safely home.<sup>64</sup>

This was but one incident in an increasingly widespread pattern of white racism, which exploded with particular virulence across Canada during and immediately following World War I. White mobs terrorized the Blacks living near New Glasgow, physically destroying their property. White soldiers also attacked the Black settlement in Truro, Nova Scotia, stoning houses and shouting obscenities. Blacks in Ontario and Saskatchewan withstood increasingly concerted intimidation from the hateful Ku Klux Klan.<sup>65</sup> But race discrimination had a much longer history in Canada.

#### IV. *The History of Black Segregation in Canada*

Although records indicate that the first Black man arrived as early as 1606, substantial numbers did not immigrate to Canada until after the American Revolution in 1782. At that time several thousand free Black Loyalists took up land grants from the Crown. Many of the white Loyalists also brought their Black slaves with them. During the War of 1812, several thousand additional Blacks sought refuge with the British, ultimately settling in Nova Scotia between 1813 and 1815. In the 1840s and '50s, the province of Canada West received an estimated forty thousand American Blacks, who were fleeing the *Fugitive Slave Act* via the Underground Railroad. Smaller groups of Blacks migrated to the Canadian West, settling on Vancouver Island in 1859, and in Saskatchewan and Alberta in the 1890s, and between 1910 and 1914. Additional numbers continued to come from the United States and the West Indies from the 1920s onward.<sup>66</sup>

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64. Best, *supra* note 58 as reprinted in Clarke, *supra* note 51 at 123. The Norfolk House, where Carrie's brother worked, had a history of refusing to support the practices of racial discrimination so common in the area. *The [Halifax] Eastern Chronicle* (28 May 1885) noted that Mr. H. Murray refused to close his Norfolk hotel to the Fisk Jubilee Singers, a Black choir group. Members of the choir had earlier been refused admission to hotels in Pictou and Halifax.

65. Winks, *supra* note 5 at 319–25; "Negroes in the Maritimes", *supra* note 51 at 466–67; Thomson, *supra* note 51 at 467. Truro, which would earn itself the designation of "the Alabama of Canada" and "Little Mississippi", also maintained a "Whites Only" waiting room in the railroad station: see Lubka, *supra* note 51 at 215; Winks, *supra* note 5 at 420.

66. Williams, *supra* note 24 at 7 indicates that Matthew da Costa, a Black man, accompanied Samuel de Champlain on his third voyage to Canada in 1606. A group of exiled Jamaican Maroons migrated to Nova Scotia in 1796, but left for Sierra Leone 4 years later. See R.W. Winks, "Negro School Segregation in Ontario and Nova Scotia" (1969) 50:2 *Canadian Historical Review* 164 [hereinafter "Segregation"]; Walker, *supra* note 34; J.W.St.G. Walker, *Racial Discrimination in Canada: The Black Experience* (Ottawa: Canadian Historical Association, 1985) [hereinafter "Experience"]; M. Power & N. Butler, *Slavery and Freedom*

Racist whites spearheaded campaigns within several provinces to restrict the further entry of Black immigrants.<sup>67</sup> The federal government responded in 1910 with *The Immigration Act*<sup>68</sup>. This allowed the federal cabinet to issue orders prohibiting the entry of “immigrants belonging to any race deemed unsuited to the climate or requirements of Canada.”<sup>69</sup> As

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*in Niagara* (Niagara-on-the-Lake, Ontario: Niagara Historical Society, 1993); “Negroes in the Maritimes”, *supra* note 51; J. Hornby, *Black Islanders: Prince Edward Island’s Historical Black Community* (Charlottetown: Institute of Island Studies, 1991); Hamilton, *supra* note 29. 67. In Nova Scotia, efforts were made to bar the entry of liberated slaves from the Caribbean in 1834, with the passage of *An Act to prevent the Clandestine Landing of Liberated Slaves, and other Persons therein mentioned, from Vessels arriving in this Province*, S.N.S. 1834, c. 68. The preamble stated, “Whereas, from the recent Emancipation of the Slaves in the West-Indies, Bermuda and the Bahama Islands, it is apprehended that many of the sick, infirm, idle and dissolute of them, may be transported to this Province . . . and that thereby burthensome expense may be occasioned by the Inhabitants of this Province, and Contagious Diseases be introduced among them.” The statute fined the master of the ship fifteen pounds per slave or liberated slave. A constable was stationed in the harbour to forestall any vessel from discharging slaves or liberated slaves. The act was stipulated to be in force for one year, and “from thence to the end of the next Session of the General Assembly.” Winks, *supra* note 5 at 129 states that Nova Scotia attempted to renew this act in 1836, but the Imperial Government disallowed it. See also Oliver, *supra* note 23 at 129–35. No legislative records have yet been located to verify this.

In 1911 various groups from Alberta petitioned the federal government to exclude Black immigrants. The Edmonton Board of Trade, the Orange Lodge, and the Edmonton chapter of the Imperial Order of the Daughters of the Empire were all involved. Dr. Ella Synge, spokeswoman for the latter group, drew upon pernicious racist myths to explain her motivation as that of white women’s fear of sexual assault by Black men. She claimed that “surely the result of Lord Gladstone’s foolishness in South Africa is apparent enough already, in the enormous increase in outrages on white women that has occurred.” She warned that “the finger of fate is pointing to lynch law which will be the ultimate result, as sure as we allow such people to settle among us.” See *The [Edmonton] Capital* (27 March 1911); H.M. Troper, “The Creek-Negroes of Oklahoma and Canadian Immigration, 1909–11” (1972) 53:3 *Canadian Historical Review* 272; Thomson, *supra* note 5; H.M. Troper, *Only Farmers Need Apply* (Toronto: Griffen House, 1972); R.B. Shepard, “Plain Racism: The Reaction Against Oklahoma Black Immigration to the Canadian Prairies: in O. McKague, ed., *Racism in Canada* (Saskatoon: Fifth House, 1992) 15. On the pervasiveness of racist claims regarding Black male sexuality, see A.Y. Davis, “Rape, Racism and the Myth of the Black Rapist” in *Women, Race and Class* (New York: Random House, 1981); Jones, *supra* note 31; A.M. Duster, ed., *Crusade for Justice: The Autobiography of Ida B. Wells* (Chicago: University of Chicago Press, 1970).

68. S.C. 1910, c. 27.

69. *Ibid.* at s. 38 provided: The Governor in Council may, by proclamation or order whenever he deems it necessary or expedient

(c) prohibit for a stated period, or permanently, the landing in Canada, or the landing at any specified port of entry in Canada, of immigrants *belonging to any race deemed unsuited to the climate or requirements of Canada*, or of immigrants of any specified class, occupation or character.

Section 37 also provided: Regulations made by the Governor in Council under this Act may provide as a condition to permission to land in Canada that immigrants and tourists shall possess in their own right money to a prescribed minimum amount, which amount may vary according to the race, occupation or destination of such immigrant or tourist. . . . [emphasis



early as 1864, physicians had been predicting that the harsh Canadian winter would “efface” the Black population, and this theme was enthusiastically adopted by senior officials from the Department of the Interior at the turn of the century.<sup>70</sup> An order in council was drafted in 1911 to prohibit the landing in Canada of “any immigrant belonging to the Negro race”, but it was never declared. Concerned about the potential diplomatic problems this overtly exclusionary policy might create between Canada and the United States, the authorities opted to utilize unwritten, informal rules to accomplish the same end by more indirect means.<sup>71</sup> Similar legislation was enacted in Newfoundland in 1926.<sup>72</sup>

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added]. *The Immigration Act*, S.C. 1921, c. 32 amending S.C. 1910, c. 27 was introduced to exclude from its scope Canadian citizens, diplomatic officials, and the military.

The legislation was expanded by *The Immigration Act*, S.C. 1919, c. 25, s. 13, repealing S.C. 1910, c. 27, s. 38(c), enacting in its stead the following:

(c) prohibit or limit in number for a stated period or permanently the landing in Canada, or the landing at any specified port or ports of entry in Canada, of immigrants belonging to any nationality *or race* or of immigrants of any specified class or occupation, by reason of any economic, industrial or other condition temporarily existing in Canada or because such immigrants are deemed unsuitable having regard to the *climatic*, industrial, social, educational, labour or other conditions or requirements of Canada or because such immigrants are deemed unsuitable *owing to their peculiar customs, habits, modes of life and methods of holding property, and because of their probable inability to become readily assimilated* or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their entry. [emphasis added]

See also *Immigration Act*, R.S.C. 1927, c. 93, ss. 37–38.

70. See for example, the comments of Chatham physician, Dr. T. Mack, quoted in S.G. Howe, *The Refugees from Slavery in Canada West: A Report to the Freedman's Inquiry Commission* (Boston: 1864) at 19: “The disease [Blacks] suffer most from is pulmonary—more than general tubercular; and where there is not real tubercular affection of the lungs there are bronchitis and pulmonary affections. I have the idea . . . that this climate will completely efface them.” See also the comments of L. Pereira, Department of the Interior, Ottawa, to Reverend W.A. Lamb-Campbell, Galveston, Texas, 20 Sept. 1906, as quoted in Troper, *supra* note 67 at 127: “[It has been] observed that after some years of experience in Canada [Negroes] do not readily take to our climate on account of the rather severe winter”.

71. Prime Minister Laurier was also apparently concerned about a backlash among the Black liberal voters in Nova Scotia and southwest Ontario. Under the informal exclusionary program, the Department of the Interior made it very clear, both to immigration agents and to prospective Black settlers, that the standard medical and character examinations made at the border would result in the rejection of Black immigrants. See Troper, *ibid.* at 140–41.

72. *The Immigration Act, 1926*, S.N. 1926, c. 29, provided:

s.11 Regulations made by the Governor-in-Council under this Act may provide as a condition to permission to land in this Colony that Immigrants shall possess in their own right money to a prescribed minimum amount which amount *may vary according to the race*, occupation or destination of such immigrant. . . .

s.12 The Governor-in-Council may, by Proclamation or order whenever he deems it necessary, or expedient . . .

(b) prohibit for a stated period, or permanently the landing in this Colony, or the landing at any specified port of entry in this Colony, of immigrants

From the middle of the 19th century, Blacks and whites in two provinces could be relegated to separate schools by law.<sup>73</sup> Ontario had amended its *School Act* in 1849 to permit municipal councils “to authorize the establishing of any number of schools for the education of the children of colored people that they may judge expedient.” The preamble to the statute was quite specific. The legislation was necessary, it admitted, because “the prejudices and ignorance” of certain Ontario residents had “prevented” certain Black children from attending the common schools in their district.<sup>74</sup> The statute was amended in 1850, to clarify that the initiative to set up a separate school for “coloured people” was to come from the Black community itself. Local public school trustees were to establish such schools upon the application of twelve or more Black families in the area.<sup>75</sup> The number would be reduced, in 1886, to five families.<sup>76</sup> Although drafted in permissive language, white officials

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*belonging to any race deemed unsuited to the climate or requirements of this Colony, or of immigrants of any specified class, occupation or character.*

[emphasis added]

73. Although the legislation was restricted to Ontario and Nova Scotia, several other provinces relied upon local social pressure to deprive Blacks of schooling or to force them into opening their own schools. See Winks, *supra* note 5 at 365, regarding New Brunswick and Prince Edward Island.

74. *An Act For the Better Establishment and Maintenance of Public Schools in Upper Canada, and For Repealing the Present School Act*, S.C. 1849, c. 83, ss. 69–71.

75. *An Act For the Better Establishment and Maintenance of Common Schools in Upper Canada*, S.C. 1850, c. 48, s. 19 read: “And be it enacted, That it shall be the duty of the Municipal Council of any Township, and of the Board of School Trustees of any City, Town or incorporated Village, on the application in writing of twelve or more resident heads of families, to authorize the establishment of one or more separate schools for Protestants, Roman Catholics, or coloured people, and, in such case, it shall prescribe the limits of the divisions or sections for such schools. . . .”

76. *The Separate Schools Act, 1886*, S.O. 1886, c. 46, provided as follows:

s.3(1) . . . upon the application in writing of five or more heads of families resident in any township, city, town or incorporated village, being coloured people, the council of such township or the board of school trustees of any such city, town or incorporated village, shall authorize the establishment therein of one or more Separate Schools for coloured people, and in every such case, such council or board, as the case may be, shall prescribe the limits of the section or sections of such schools.

s.3(2). No person shall be a supporter of any Separate School for coloured people unless he resides within three miles in a direct line of the site of the school house for such Separate School.

s.6. None but coloured people shall vote at the election of trustees of any Separate School established for coloured people. . . .

s.9. In all cities, towns, incorporated villages and township public school sections in which separate schools exist, each . . . coloured person . . . sending children to any such school, or supporting the same by subscribing thereto annually an amount equal to the sum at which such person, if such separate school did not exist, must have been rated in order to obtain the annual legislative public school grant, shall be exempt from the payment of all rates imposed

frequently used coercive tactics to force Blacks into applying for segregated schools.<sup>77</sup> Once separate schools were set up, the courts refused Black children admission to any other schools, despite evidence that this forced many to travel long distances to attend schools they would not have chosen otherwise.<sup>78</sup> Separate schools for Blacks continued until

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for the support of public schools of such city, town, incorporated village and school section respectively, and of all rates imposed for the purpose of obtaining such public school grant.

s.10. The exemption from the payment of school rates, as herein provided, shall not extend beyond the period during which such persons send children to or subscribe as aforesaid for the support of such separate school; nor shall such exemption extend to school rates or taxes imposed or to be imposed to pay for school-houses, the erection of which was undertaken or entered into before the establishment of such separate school.

s.11. Such separate schools shall not share in any school money raised by local municipal assessment for public school purposes.

s.12. Each such separate school shall share in such legislative public school grants according to the yearly average number of pupils attending such separate school, as compared with the average number of pupils attending the public schools in each such city, town, incorporated village or township; the mean attendance of pupils for winter and summer being taken.

s.16. The trustees of each such separate school shall, on or before the thirtieth day of June, and the thirty-first day of December of each year, transmit to the county inspector a correct return of the names of all . . . coloured persons . . . who have sent children to, or subscribed as aforesaid for the support of, such separate school during the then last preceding six months, and the names of the children sent, and the amounts subscribed by them respectively, together with the average attendance of pupils in such separate school during such period.

s.18. The trustees of each such separate school shall be a body corporate . . . and shall have such power to impose, levy and collect school rates or subscriptions, upon and from persons sending children to, or subscribing towards the support of the separate school as are provided in section 54 of this Act.

77. Winks, *supra* note 5 at 365–76; “Segregation”, *supra* note 66 at 174–76.

78. *Washington v. Charlotteville School Board* (1854), 11 U.C.Q.B. 569 (Ont.) held that school authorities could not exclude Black children unless alternate facilities for “colored pupils” had been established, but *Hill v. Camden & Zone School Board* (1854), 11 U.C.Q.B. 573 (Ont.) ruled that Black children could be forced to attend separate schools located miles away from their homes and outside of their school sections.

An amendment was passed in 1869, which provided “that no person shall be deemed a supporter of any separate school for coloured people, unless he resides within three miles in a direct line of the site of the school house for such separate school; and any coloured child residing farther than three miles in a direct line from the said school house, shall be allowed to attend the common school of the section within the limits of which the said child shall reside”: see *An Act to Amend the Act respecting Common Schools in Upper Canada*, S.O. 1868–69, c. 44, s. 9. These provisions were continued by *The Separate Schools Act*, R.S.O. 1877, c. 206, ss. 2–5. See also R.S.O. 1897, c. 294.

After the amendment, several cases acknowledged that race should not be the sole ground for exclusion from common schools, but then accepted the testimony of school authorities regarding overcrowding and “insufficient accommodation”, using this to defeat the claims of Black parents to register their children in non-segregated schools: see *Hutchison v. St. Catharines (City of) Board of Education* (1871), 31 U.C.Q.B. 274 (Ont.); *Dunn v. Windsor (City of) Board of Education* (1884), 6 O.R. 125 (H.C.). For two examples of cases where the efforts of education officials to bar Black children from common public schools were challenged successfully, see *Simmons v. Chatham (Township of)* (1861), 21 U.C.Q.B. 75

1891 in Chatham, 1893 in Sandwich, 1907 in Harrow, 1917 in Amherstburg, and 1965 in North Colchester and Essex Counties.<sup>79</sup> The Ontario statute authorizing racially segregated education would not be repealed until 1964.<sup>80</sup> As historian Robin Winks has noted:

The Negro schools lacked competent teachers, and attendance was highly irregular and unenforced. Most schools met for only three months in the year or closed entirely. Most had no library of any kind. In some districts, school taxes were collected from Negro residents to support the [white] common school from which their children were barred. . . . The education received . . . could hardly have been regarded as equal. . . .<sup>81</sup>

Similar legislation had existed since 1865 in Nova Scotia, where education authorities had been authorized to establish "separate apartments or buildings" for pupils of "different colors".<sup>82</sup> A campaign for racial integration in the schools, organized by leaders of the Black community in 1884, prompted an amendment to the law, stipulating that Black pupils could not be excluded from instruction in the areas in which they lived.<sup>83</sup> But the original provisions for segregation within the public school system remained intact until 1950.<sup>84</sup> In 1940 school officials in

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(Ont.), quashing for uncertainty a by-law which purported to substantially enlarge the geographic catchment area of a separate school, and *Stewart v. Sandwich East School Board* (1864), 23 U.C.Q.B. 634 (Ont.), which accepted evidence that the separate school operated only intermittently as a reason to overrule the common school's refusal to register a Black female student. See also Winks, *supra* note 5; "Segregation", *supra* note 66 at 175-82.

79. Winks, *ibid.*; "Segregation", *ibid.* at 182 and 190.

80. The specific provisions relating to "coloured people" were continued in *The Separate Schools Act*, R.S.O. 1887, c. 227, as am. by R.S.O. 1897, c. 294; R.S.O. 1914, c. 270; R.S.O. 1927, c. 328; R.S.O. 1937, c. 362; R.S.O. 1950, c. 356; R.S.O. 1960, c. 368, as rep. by S.O. 1964, c. 108, s. 1.

81. "Segregation", *supra* note 66 at 177.

82. *An Act for the Better Encouragement of Education*, S.N.S. 1865, c. 29, s. 6(15) authorized school boards "to receive the recommendation of any inspector for separate apartments or buildings in any section, for the different sexes or different colors, and make such decisions thereon as they deem proper." Section 37 (*ibid.*) added: "If in any section the Council of Public Instruction shall permit separate departments under the same or separate roofs, for pupils of different sexes or different colors, the Trustees of the section shall, in this as in other cases, regulate attendance on the separate departments, according to the attainments of the pupils." See also *Of Education. Of Public Instruction*, R.S.N.S. 1873, c. 32, s. 3(10), which restated this law. See also Winks, *supra* note 5 at 376-80; "Segregation", *supra* note 66 at 183.

83. *Of Education. Of Public Instruction*, R.S.N.S. 1884, c. 29, s. 3(10) authorized the Council of Public Instruction "to receive the recommendation of any inspector for separate apartments or buildings in any section for the different sexes or different colors, and make such decisions thereon as they shall deem proper; but colored pupils shall not be excluded from instruction in the public school in the section or ward where they reside." See Fingard, *supra* note 23; Winks, *supra* note 5 at 376-80; "Segregation", *supra* note 66 at 184; Thomson, *supra* note 51 at 9.

84. These provisions were continued with minor wording alterations by *The Education Act*, R.S.N.S. 1900, c. 52, s. 5(14), as am. by S.N.S. 1911, c. 2, s. 5(14); S.N.S. 1918, c. 9, s. 5(p); R.S.N.S. 1923, c. 60, s. 5(q). The latter statute substituted the word "race" for "color" as follows:

Lower Sackville, in Halifax County, barred Black children from attending the only public school in the area, and until 1959 school buses would stop only in the white sections of Hammonds Plains.<sup>85</sup> In 1960 there would still be seven formal Black school districts and three additional exclusively Black schools in Nova Scotia.<sup>86</sup> “Only the most blind of school inspectors could have pretended that separate education was also equal education,” concludes Winks.<sup>87</sup>

Beyond the schools, racial segregation riddled the country. The colour bar was less rigidified than in the United States, varying between regions and shifting over time.<sup>88</sup> But Canadian employers commonly selected their workforce by race rather than by merit.<sup>89</sup> Access to land grants and

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“to receive the recommendation of any inspector for separate apartments or buildings in any section for the different sexes or different races of pupils, and to make such decisions thereon as it deems proper, subject to the provision that colored pupils shall not be excluded from instruction in the public school in the section in which they reside.”

The provisions were repealed in *The Education Act*, S.N.S. 1950, c. 22, s. 4. At no point in any of these enactments were the terms “race”, “color” or “colored pupils” defined. See also Winks, *supra* note 5 at 376–80; “Segregation”, *supra* note 66 at 186–87.

85. Winks, *ibid.* at 376–80; “Segregation”, *ibid.* at 188–89. In Lower Sackville, Mrs. Pleasah Lavinia Caldwell, a Black Nova Scotian responded by opening a “kitchen school” in her home, which educated Blacks in the area until her death in 1950. See H. Champion, “School in a Kitchen” unlabelled clipping dated 9 November 1949, held by P.A.N.S., Mgl, vol. 1767 #42a.

86. In 1964, four such districts continued: Beechville, Hammond Plains, Lucasville and Cherry Brook, all in Halifax County. See Winks, *ibid.* at 376–80; “Segregation”, *ibid.* at 191.

87. For details of the lack of funding and difficulties recruiting teachers, obtaining equipment, premises and transportation in Nova Scotia, see “Segregation”, *ibid.* at 186–87.

88. Winks, *supra* note 5 at 325 comments on the “formlessness of the racial barrier”, and noting at 326 (*ibid.*): “In the United States the Negro was somewhat more sure—sure of where he could and could not go, of when to be meek and when to be strong. In Canada he was uncertain.”

89. According to Oliver, *supra* note 23 at 129–35, most Black males could not find work except in the heaviest and most poorly paid jobs: agriculture, mining, lumbering, steel, railway & shipping industries. In most cases, they were also barred from membership in unions. Business ventures were limited to barber shops, beauty parlours, taxi business, trucking, shoe-making, a newspaper and one co-operative store. Prior to World War II, Black females were limited to teaching school or domestic work. The nursing field opened to women in 1949, when two Blacks graduated as registered nurses.

Morton, *supra* note 48 at 67 notes: “African-Nova Scotian women had virtually no legal wage-earning opportunities outside domestic service, taking in laundry, or sewing. Regardless of the status in the community, property holdings or occupation of the husband, married women and widows charred, and young women were servants.”

Williams, *supra* note 24 at 45 notes that the Superintendent of Nurses of the Montreal General Hospital admitted in the 1930s that Black nurses could not find employment in Montreal, “since there were not enough Black patients to care for in the hospitals (and White patients would not allow Black nurses to touch them).” See also “Girl Barred by Color from Nurses Training Course” *The [New Glasgow] Clarion* 2:15 (6 October 1947) 1, recounting race barriers against Black women throughout Ontario. Williams also notes (*ibid.*) that Blacks were barred from doing medical internships in Montreal between 1930 and 1947. The Faculty of Medicine at McGill University arranged instead for Blacks to serve their internships with Howard University in Washington, D.C.

residential housing was frequently restricted by race.<sup>90</sup> Attempts were

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D.H. Clairmont & D.W. Magill, "Nova Scotia Blacks: Marginality in a Depressed Region" in W.E. Mann, ed., *Canada: A Sociological Profile* (Toronto: Copp Clark, 1971) at 177ff quote P.E. MacKerrow, *A Brief History of the Colored Baptists of Nova Scotia* (Halifax: 1895): "the United States with her faults, which are many, has done much for the elevation of the coloured race. Sad and sorry are we to say that is more than we can boast of here in Nova Scotia. Our young men as soon as they receive a common school education must flee away to the United States and seek employment. Very few ever receive a trade from the large employers, even in the factories, on account of race prejudices. . . ."

A.S. Green, *The Future of the Canadian Negro*, (1904), P.A.N.S. V/F vol. 144 #11 at 17, wrote: "How many negroes do you find as clerks, book-keepers, or stenographers within the provinces? I know of but *one*. . . . Our people are excluded from such lucrative positions, not so much from disqualification, as from race-prejudice." See also Walker, *supra* note 66 at 15, where he notes that during the inter-war years, Black men were concentrated in the following specialized areas: waiters, janitors, barbers and labourers. The elite among the men worked as railway waiters and porters.

See also D. Brand, *No Burden to Carry: Narratives of Black Working Women in Ontario 1920s to 1950s* (Toronto: Women's Press, 1991) at 155ff.

90. Residential segregation began almost immediately upon the arrival of the first large group of Black Loyalists. The initial land grants issued to the immigrants were carefully segregated by race, with the Black settlers given smaller parcels of land with poorer soil at less favourable locations than whites received. See Winks, *supra* note 5 at 36; Walker, *supra* note 34 at 18–64. Winks notes (*ibid.* at 325) that this pattern continued well into the 20th century, with some towns barring all Blacks from residence: "In Pictou County [Nova Scotia], by convention, Negroes were not permitted to live in Stellarton, Westville, Trenton, or Pictou itself. . . ." Hill, *supra* note 24 at 105 notes that Blacks were refused the right to buy town lots in Windsor in 1855. In Montreal, Williams, *supra* note 24 at 36–38 indicates that Westmount was similarly restricted. Housing was so difficult for Blacks to obtain in Montreal that a Black real estate company, the Eureka Association, was founded in the 1920s to pool money to purchase tenement housing for rental to Blacks. Williams notes at 58 (*ibid.*): "Blacks in the forties usually had to put double the downpayment on a house that they wanted to purchase. This kept homeownership out of the reach of all but the upper middle class Blacks."

Blacks who attempted to challenge residential segregation could find their property and persons endangered. Winks, *supra* note 5 at 419–20 recounts an incident where a Black purchased a house in a white area of Trenton, Nova Scotia in 1937: "A mob of a hundred whites stoned the owner and broke into his home. After being dispersed by the Royal Canadian Mounted Police, the mob returned the following night—now four hundred strong—and destroyed the house and its contents. The RCMP would not act unless requested to do so by the mayor, who refused, and the mob moved on to attack two other Negro homes. The only arrest was of a New Glasgow black, who was convicted of assault on a woman during the riot; and the original Negro purchaser abandoned efforts to occupy his property."

M. Haley, Letter, *The [Halifax] Mail-Star* (2 December 1959) 4, noted that she had rented an apartment in Dartmouth, but when she prepared to move in, and appeared at the apartment with a "colored" friend, the landlord advised her that Blacks were not to be brought into the building. "I explained that I myself am colored," explained Haley, who shortly thereafter "received word from the landlord that I could not have the apartment." Adding that "I am told that my case is a single case among many," she concluded: "I need shelter and place for my children to live and this need is not any less because of the color of my skin."

*The [Halifax] Mail-Star* (15 March 1960) 3, reported on a meeting of the NSAACP, chaired by Pearlleen Oliver, to discuss the widespread racial discrimination in housing in Halifax. Blacks who had tried to rent reported that "various excuses were given, ranging from the frank view that owners don't want to rent to colored people, to the fact that the owners themselves don't mind but they have to think of their neighbors." Those who attempted to

made to bar Blacks from jury service.<sup>91</sup> The military was rigorously segregated.<sup>92</sup> Blacks were denied equal service to some forms of public transportation.<sup>93</sup> Blacks and whites tended to worship in separate churches, sometimes by choice, other times because white congregations refused membership to Blacks.<sup>94</sup> Orphanages could be segregated by race.<sup>95</sup> Some hospitals refused access to facilities to Black physicians and service to Black patients.<sup>96</sup> Blacks were even denied burial rights in segregated cemeteries.<sup>97</sup> While no consistent pattern ever emerged,

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purchase homes also faced difficulties. "A house that was advertised for \$18,000 would only be sold to us for \$26,000", reported one Black participant. See additional accounts in the *The [Halifax] Chronicle-Herald* (9 May 1962) 34.

See also "Negroes in the Maritimes", *supra* note 51 at 467; Brand, *supra* note 89 at 155. For some details regarding similar discrimination against the Chinese in British Columbia, see K.J. Anderson, *Vancouver's Chinatown: Racial Discourse in Canada, 1875-1980* (Montreal: McGill-Queen's University Press, 1991) at 122-27.

91. Winks, *supra* note 5 at 251 and 284-86 notes that there was a challenge to Black jurors and jury foremen in Toronto in 1851, which was unsuccessful. Blacks were excluded from jury service in Victoria between 1864 and 1872. Walker, *supra* note 34 at 8 notes that Blacks "could not serve on juries or claim a jury trial."

92. During World War I, enlisting Blacks were relegated to a corps of foresters who were assigned to manual-labour tasks in France. At Gagetown, New Brunswick, the local commanding officer insisted upon the segregation of Blacks from whites because "no Canadian fighting man could be asked to sit next to a coloured man." See "Negroes in the Maritimes", *supra* note 51 at 466-67. The Reverend W.P. Oliver, the only Black chaplain in the Canadian army, was appointed to minister to "Coloured Personnel".

93. Winks, *supra* note 5 at 248 notes that Blacks could not purchase cabin-class tickets on the Chatham steamer in the 1850s. Hill, *supra* note 24 at 105 notes that Blacks were discriminated against on steamboats and stage coaches. Hill recounts one mid-19th century incident (*ibid.*): "Peter Gallego, while travelling by boat between Toronto and Kingston, was told to keep out of the captain's dining room. When he defiantly entered, the captain attacked him. Gallego knocked the man down and proceeded, undisturbed, to eat his meal. When the ship reached Kingston, the captain charged Gallego with assault. Gallego, in turn, charged the captain with denying him his natural rights. The case went to court, where both men were fined, Gallego 5 pounds and the captain 20 pounds."

94. See "Negroes in the Maritimes", *supra* note 51 at 466; Winks, *supra* note 5 at 286 and 325; Hill, *supra* note 24 at 104.

95. The Nova Scotia Home for Colored Children was opened in Halifax in 1921 and continued in operation until 1965. Winks, *supra* note 5 at 349 notes: "Despite denials that the province encouraged segregation, so long as the Protestant-based Home for Colored Children existed, no Negro was admitted to other public or private homes. Race, not religion, was the criterion for placement of abandoned or orphaned children. . . ."

96. Winks, *supra* note 5 at 420 indicates that during the 1940s "an Edmonton hospital admitted to drawing the color line." Pearleen Oliver has noted that in the mid-1940s, Black physicians practising in Halifax were denied access to the city hospitals: Pearleen Oliver, *supra* note 26.

97. Winks, *supra* note 5 at 325 notes that in Halifax, Fredericton and Colchester, Blacks could not be buried in Anglican churchyards. See also "Baby Refused Burial in St. Croix Cemetery" *The [Halifax] E.N.* (11 October 1968) which describes a 1907 by-law concerning the St. Croix Cemetery, near Windsor, N.S., still in force, which provided: "Not any negro or colored person nor any indian shall be buried in St. Croix Cemetery."

various hotels, restaurants, theatres, athletic facilities, parks, swimming pools, beaches, dance pavilions, skating rinks, pubs and bars were closed to Blacks across the country.<sup>98</sup>

There were as yet no Canadian statutes expressly prohibiting such behaviour. The first statutes to contain anti-discrimination provisions had been passed in the 1930s and '40s.<sup>99</sup> A 1932 Ontario act made it an offence for insurers to discriminate unfairly on the basis of "the race or religion of the insured".<sup>100</sup> Several British Columbia statutes passed between 1931

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98. Winks, *supra* note 5 at 248 and 283–86 notes that hotels in Hamilton, Windsor, Chatham and London refused admission to Blacks in the mid 19th century. In the 1860s in Victoria, the chief theatre refused Blacks access to the dress circle or to orchestra seats, the Bank Exchange Saloon refused service to Blacks, and they were also excluded from Queen Victoria's birthday ball and from the farewell banquet for Governor James Douglas. The colour line remained visible in British Columbia in restaurants and places of entertainment prior to World War I. Winks notes (*ibid.* at 325) that Blacks were not admitted to the boy scout troops or the YMCA in Windsor and Black musicians had to establish their own orchestra in Owen Sound. Winks continues (*ibid.* at 420)I: "In 1924 the Edmonton City Commissioner barred Negroes from all public parks and swimming pools—and was overruled by the city council; in Colchester, Ontario, in 1930, police patrolled the parks and beaches to keep blacks from using them. In Saint John all restaurants and theaters closed their doors to Negroes in 1915; two years later the chief theaters of Hamilton also did so. . . . In 1929, when the World Baptist Conference was held in Toronto, Negro delegates were denied hotel rooms. . . . Only one hotel in Montreal could be depended upon not to turn Negroes away in 1941. . . . Many dance pavilions, skating rinks and restaurants made it clear they did not welcome blacks; and several pubs in Saskatchewan and British Columbia insisted that Negroes sit in corners reserved for them." Even into the 1960s, Winks notes (*ibid.* at 457) that Black residents were virtually barred from community restaurants, and (*ibid.* at 388) that Windsor barkeepers designated separate "jungle rooms" for Blacks until 1951.

See H. Lawrence, Article, *The [New Glasgow] Clarion* 2 (December 1946) 2, in which he urges the Black community to establish a community centre because "every place is closed to us." See A.M. Galante, "Ex-mayor Lewis broke new ground" in "Afro-Nova Scotian Portraits" *The [Halifax] Chronicle-Herald* and *The [Halifax] Mail-Star* (19 February 1993) P7, where Daurene Lewis notes that the dances in Annapolis Royal were always segregated (circa 1940s–50s), and attempts were made to segregate the movie house as well. See also D.G. Hill, "Black History in Early Ontario" in *Canadian Human Rights Yearbook* (Human Rights Research and Education Centre, University of Ottawa, 1984–85) at 265 [hereinafter "Early Ontario"]; "Negroes in the Maritimes", *supra* note 51 at 467; "Segregation", *supra* note 66 at 189; A.P. Stouffer, *The Light of Nature and the Law of God: Anti-Slavery in Ontario, 1833–1877* (Montreal: McGill-Queen's Press, 1992) at 200–01; Brand, *supra* note 89 at 134ff.

See also McKenzie, *supra* note 26 at 201, who notes that "[Negroes] are not always served in the best restaurants, nor admitted to high-class hotels. They are restricted, in cities, to the poorer residential districts, and are not accepted socially."

99. See W.S. Tarnopolsky & W.F. Pentley, *Discrimination and the Law* (Don Mills, Ontario: Richard DeBoo, 1985) [hereinafter Tarnopolsky]. This article will not attempt to chronicle the various municipal by-laws which contributed to racist practices, nor those which attempted, beginning in the 1940s, to reduce racist behaviour. The discussion which follows is limited to provincial and federal enactments.

100. *The Insurance Act, 1932*, S.O. 1932, c. 24, s. 4 provided:

*The Insurance Act* is amended by adding thereto the following section: 92a. Any licensed insurer which discriminates unfairly between risks within Ontario because of the race or religion of the insured shall be guilty of an offence.